IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Appeal No. C/52842/2014-CU [DB]

[Arising out of Orders in Appeal No. CC(A)CUS/ICD/74/2014 dated 28.02.2014, passed by the Commissioner (Appeals), Customs, New Custom House, New Delhi]

For approval and signature:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Commissioner of Customs ....Appellant

Vs.

Krishna Overseas ....Respondent

Appearance:

Shri R.K. Manjhi, DR for the Appellant - Revenue
Ms. Reena Rawat, Advocate for the Respondent- Assessee

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing: 06.01.2017

Date of Pronouncement: 13.01.2017

FINAL ORDER NO. 50343 / 2017-CU [DB]

Per V. Padmanabhan

The present appeal filed by Revenue is directed against Order-in-Appeal dated 28.02.2014, passed by Commissioner (Appeals), Customs, IGI Airport, New Delhi.

2. The respondent-assessee imported certain goods and filed Bill of Entry and declared different types of "screws and cotton gloves for industrial use". However, when the goods were examined, it was found that in place of various types of screws as declared, steel measuring tapes of length of 3 meters and 5 meters were found which were not

declared in the relevant bills. Customs authorities proceeded to assess the value of the undeclared goods. In adjudication proceedings before the Original Authority, namely Additional Commissioner (Customs), charge of misdeclaration under section 111(l), (d) and (m) of the Customs Act, 1962 was upheld. The misdeclared goods i.e. measuring tapes were confiscated absolutely and penalty of Rs. 10 Lakh was imposed on the appellant under section 112(a) (i) and (ii) of the Customs Act, 1962. The declared goods which were found i.e. Cotton Gloves were ordered to be confiscated under section 119 and allowed for redemption with redemption fine of Rs. 2 Lakh. When the Order-in-Original was challenged before the Commissioner (Appeals), he upheld the absolute confiscation of measuring tapes. However, he vacated the penalty imposed on the appellant. Aggrieved by the above order, Revenue is in appeal with a plea that the Commissioner (Appeals) was not right in setting aside the confiscation as well as the penalties imposed on the importer. They have further prayed that penalty on the importer under section 114A would also be liable.

3. With the above background, we have heard Shri R.K. Manjhi, Ld. DR for the Revenue as well as Shri Reena Rawat, ld. Advocate for the importer.

4. The importer filed Bill of Entry declaring various types of Screws as well as Cotton Gloves as imported goods. On an open examination of the goods, it was found that Cotton Gloves were received. However, in place of various types of Screws, steel measuring tapes were found. The importer contended that the goods received were not those ordered by them. However, the fact remains that in the Bill of Entry

filed by the importer, the goods have been misdeclared. Consequently, the measuring tapes, which have not been declared but were found in the consignment become prohibited goods and liable for confiscation under section 111(d), (n) (m) of the Customs Act, 1962. The goods stand absolutely confiscated without giving an option for redemption. The importer seems to have accepted this and forfeited this consignment. However, for the offence of misdeclaration, the importer will be liable for penalty under section 112(a) of the Customs Act, 1962.

5. The second item declared i.e. Cotton Gloves for industrial use, were found in the consignment as per declaration. However, these goods have been confiscated under section 119 by taking a view that these were used to conceal the smuggled goods viz. the steel measuring tapes. We are of the opinion that this view is farfetched. The cotton gloves for industrial use were declared in the Bill of Entry and hence there is no justification for ordering confiscation of this item. Further there is no justification for imposition of any penalty under Section 114A.

6. In view of the above recorded facts and circumstances of the case, we are of the view that penalty of Rs. 2,00,000/- has to be imposed on the importer under section 112(a) of the Customs Act, 1962.

7. The appeal is disposed of in the above terms.

[Pronounced in the open Court on 13.01.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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